

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5330 of 1997

WITH

CIVIL APPLICATION NO. 12293 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD

Versus

LEGAL HEIRS OF DECD.BHIKHABHAINATHUBHAI

Appearance:

MR ARUN H MEHTA for Petitioners

MR. D.P. KINARIWALA for Respondent No. 1 to 7.

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.M.KAPADIA

Date of decision: 03/05/99

ORAL JUDGEMENT (Per J.N.Bhatt, J)

Admitted. Service of notice waived by Ld. advocate Mr. D.P.Kinariwala Upon joint request, the matter is taken up for final hearing. By this appeal, under Sec. 173 of the Motor Vehicles Act, 1988, the appellant-original-opponent, the tortfeasor, has questioned the legality and validity of the judgement and award recorded in M.A.C.Petition No.191 of 1997 by the Motor Accident Claim Tribunal, at Bhavanagar, whereby, the respondents original claimants came to be awarded an amount of Rs.4

lacs by way of compensation with interest at the rate of 15% p.a. from the date of application to the date of realisation of the proportionate cost on account of the tort committed in vehicular accident which occurred on 1.7.1997, at about 10:00 a.m. which took the life of breadwinner of the claimants while he was in charge of 3 wheeler tempo.

2. After having considered the factual scenerio imerged from the record of the present case and the evidence and rival subission raised before us, we are satisfied with the over all assessment of compensation made by the Tribunal. Upon examining the perriferi that the evidence is justified and there requires no intereference and to exercise our powers under Sec. 173 ofthe Act. Needless to reiterate that orinarily, in appeal under Sec. 173 of the Act, the Appellant Court will be at liberty to interfere with the impugned award, unless the amount awarded by way of compensation is grossly inadequate or highly excessive. We are not in a position to agree with the submission of the Learned Advocate for the appellant-original-opponent that the amount awarded is on higher side.

3. The following aspects have imerged in questionable form from the record of the present case which would evidently assessment reinforce, ultimately, the conclusion recorded by the Tribunal is that; (1) the deceased was the breadwinner of the family, aged about 38 years at the relevant time, (2) he was soldering the rensponsibility of maintaining 7 original claimants out of doing transport business, he was also having milk selling business and partly from agriculture produce (3) the Tribunal, after having considering the income the prevalent of the deceased on prospective earning as assessed Rs.4500/- p.m. in view of the variety of the business undertaken by the deceased and the income certificate produced before the Tribunal. Therefore, annual income of the deceased is assessed at Rs.36,000/p.a. applying 16 multiplier, the Tribunal assessed Rs.5,76,000/- by way of annual loss of income on account of premature demise of the deceased, the Tribunal also awarded an amount of Rs.20,000/- under the head of loss of estate, and that come in all Rs.5,96,000/- and at added Rs.2000/- towards the damages caused to the tempo of the deceased, awarding lumbsum amount Rs.6,00,000/-.

4. It is true that, the certificate issued by the Sarpanch or Local Authority is not conclusive, as it is not his Domain or the authority to consider on record such income certificate, much less under indicating on

what basis the conclusion is arrived at. Even while, being obvious to that aspect, the assessment of the compensation in the facts and circumstances, does not compel or prompt or to take different view. The amount of Rs.25 thousand deposited along with the memo of appeal, prima facie, is ordered to be transferred to the Tribunal concerned, for being disbursement to the claimants. The amount of deposit if any, so far made in any case, if not made, the appellants are directed to deposit the full amount in terms of impugned award within period of 6 weeks from today with proportionate cost of interest and in that case, amount being deposited, which will be open for the Tribunal to disburse the amount in terms of the direction contained in the impugned award.

5. However, since, the Tribunal found that, while the deceased was driving his tempo, the unfortunate road accident took place, and the deceased was also contributory negligent at the ratio of 1/3 and therefore, deducted 1/3 amount and therefore, finally awarded an amount of Rs.4 lacs by way of compensation to the claimants under all heads which is challenged before this Court.

6. The claimant No.1, wife of the deceased examined at exh. 21 and it is noticed from the evidence that the deceased was doing multiple activities, whereby, he was earning. He was running transport business, he was also partly doing milk selling business and he had also the agriculture produce income. It is, unfortunate, that even one of the claimants could not ever see the father. Be as it may, having taken in to consideration, the aforesaid facts and circumstances, we have no hesitation in finding that the reasonings, adopted by the Tribunal and the evidence on record, there requires no interference as we are convinced with the amount awarded after deducting the contribution of the deceased to the accident of 1/3 in the happening of the unfortunate road accident, is in no way excessive or on a higher side. Therefore, the appeal is required to be dismissed.

In view of above order, there will be no order in Civil Application No.12293/97. No orders as to costs.

Date: 03/05/1999. (J.N.Bhatt,J) (A.M.Kapadia,J)

sanjay.